

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:09-CR-17

UNITED STATES OF AMERICA)
)
)
v.) **ORDER**
)
)
ALBERT CHARLES BURGESS, JR.)
)
)

THIS MATTER is before the Court upon the memorandum and recommendation of United States Magistrate Dennis L. Howell, filed May 27, 2010. (Doc. 127.) The parties were advised that pursuant to 28 U.S.C. § 636(b)(1)(C), written objections to the memorandum and recommendation must be filed within fourteen days after service of the memorandum. Defendant filed a motion requesting a 15 day extension of time to file his objections. (Doc. 128.) The Magistrate granted that motion (Doc. 139, 5), and Defendant timely filed his objections (Doc. 140).

After an independent and thorough review of the Magistrate's memorandum, Defendant's objections thereto, and a *de novo* review of the record, the Court orders the following: (1) that Defendant's Motion to Dismiss Count 1 + 2 of the Indictment and Subsequent Conviction – Double Jeopardy (Doc. 109) is denied; (2) Defendant's Motion to Dismiss Count 2 of the Indictment and Subsequent Conviction – Ex Post Facto Violation (Doc. 110) is denied; (3) Defendant's Motion for a New Trial Under the Cumulative Application of Fed. R. Crim. P. 33(a), 48, and LRCrP WDNC 471.1(h) (Doc. 119) is denied; and (4) the dispositive motions contained in Motions of Defendant (Doc. 117) are denied.

Accordingly, the findings and conclusions of the Magistrate are accepted and Defendant's Motions (Docs. 109, 110, 117, 119) are **DENIED**.

IT IS THEREFORE ORDERED that the Memorandum and Recommendation of the

Magistrate is hereby **AFFIRMED**.

Signed: July 8, 2010



Graham C. Mullen
United States District Judge

